

THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Social Security

Judge Robert E. Jones remanded a social security appeal and directed the ALJ to determine if a denial of benefits may be premised upon a claimant's failure to follow a prescribed course of treatment. The plaintiff suffered from a bipolar affective disorder which was exacerbated by substance abuse. She had been prescribed medication for the bipolar disorder, but had discontinued treatment in order to address the substance abuse problem which was in remission at the time of the hearing. Judge Jones held that the ALJ erred in denying benefits based upon a failure to follow treatment for the bipolar disorder without following the criteria listed at SSR 82-59.

Ibarra v. Social Security Administration, CV 99-6149-JO (Opinion, April, 2000).

Plaintiff's Counsel:

Ralph Wilborn

Defense Counsel:

William Youngman (Local)

Employment

A former bank employee filed an action against her employer asserting claims of disability discrimination under Federal and Oregon statutes. Plaintiff also asserted claims for common law wrongful termination and intentional infliction of emotional distress. Plaintiff was a customer service representative who is blind. Her employer provided her with an adaptive software program which enabled her to perform almost all of her duties by computer. The few tasks requiring paperwork were re-routed. Plaintiff performed well and was promoted. Thereafter, another corporation purchased the bank. The new company used a different computer system and plaintiff's adaptive program no longer worked on the new system. In addition, the new company modified the job description to include a great deal more paperwork.

The new company placed plaintiff on paid administrative leave in order to sort out the computer problem. Although the leave was supposed to last a week, it ended up stretching out for several months. Plaintiff repeated called

the employer and asked that she have some input in the changes. Her requests were never addressed. She was eventually permitted to return to work, but was re-assigned to a lower position with the same pay. Shortly thereafter, plaintiff was terminated based upon the inability to accommodate her disability due to "technological changes."

The employer moved to dismiss the common law wrongful discharge claim based upon adequate statutory remedies under ORS 659. Plaintiff conceded that the claim was preempted, but argued that the claim should remain to address acts which occurred prior to October of 1997. Judge Janice M. Stewart held that plaintiff had no distinct claim for wrongful discharge based upon the employer's previous actions since she was only discharged once, in 1999. However, the court noted that pre-1997 evidence would be admissible relative to proof to sustain punitive damages.

The court also found that plaintiff failed to satisfy the "outrageous conduct" element

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necessary to sustain a claim for intentional infliction of emotional distress. Judge Stewart held that evidence regarding the employer's motivation was irrelevant to this prong of the analysis. Robinson v. U.S. Bancorp, CV 99-1723-ST (F & R, March 17, 2000; Adopted by Judge Robert E. Jones, April 20, 2000).

Plaintiff's Counsel:

Kenneth Crowley

Defense Counsel:

Jeffrey Druckman

7 Judge Anna J. Brown granted a defense motion for summary judgment in an action for sexual discrimination under Title VII, ORS 659 and Oregon common law. Plaintiff claimed that she had been subjected to a sexually hostile work environment and retaliated against by co-workers after bringing her complaints. During her tenure, plaintiff applied for and received a promotion and transfer; she resigned approximately one year after her sexual harassment complaint.

Judge Brown held that plaintiff's claims failed because she failed to demonstrate sexually offensive remarks interfered with her work performance. The court also held that the employer responded immediately and effectively to the complaint and that there was no evidence of

retaliation. DeLair v. Pacificorp, CV 98-1350-BR (Opinion, April, 2000 - 18 pages).

Plaintiff's Counsel: Kevin Lafky

Defense Counsel:

Paul Buchanan

Jurisdiction

Judge Redden dismissed a trademark infringement claim brought by a distributor of theft prevention devices against an internet-based scheduling management service for lack of personal jurisdiction. The plaintiff alleged that defendant's use of the registered Internet domain name righton.com violated his registered trademark, used to designate an anti-theft device which attaches to laptop computers. The court rejected plaintiff's argument that the purposeful availment requirement for specific jurisdiction was met because defendant conducted business over the Internet on a nationwide basis. Noting that the Ninth Circuit had previously held that simply registering another's trademark as a domain name was insufficient to subject a party domiciled in one state to jurisdiction in another, absent some evidence to suggest that the defendant intentionally directed its acquisition of the domain name at plaintiff's business in Oregon, with knowledge that plaintiff was likely to be harmed.

Perry v. RightOn.com, Civ. 00-0093-RE (Opinion, March 20, 1000 - 7 pages).

Plaintiff's Counsel: P. Rissberger

Defense Counsel: Eric Todderud

ERISA

In an ERISA case, Judge Redden rejected the defendant's argument that because a collective bargaining agreement had expired, a trust's only remedy for unpaid employer contributions after the expiration date was an unfair labor practice charge under the NLRA. Although there is no controlling authority from the Ninth Circuit on this issue, Judge Redden distinguished the Supreme Court's decision in Advanced Concrete on the ground that in Advanced Concrete the employer had not continued to make employee benefit contributions after the collective bargaining agreement expired, while in the case at bar the employer had continued to make contributions. The same distinction had been made by a district court in Washington and by the Second Circuit in Brown v. C. Volante Corp., 194 F.3d 3521 (2d Cir. 1999). Oregon Teamster Employers Trust v. O'Neill Distributing Co., Civ. 99-451-RE (Opinion, January 3, 2000 - 13 pages).

Plaintiff's Counsel: Linda Larkin

Defense Counsel: Frank Wesson